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Paper No.

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SEP 04 2008

In re Application of	:
Santiago A. Olavarria	:
Application No. 10/047,274	:
Patent No. 6,740,348	:
Filed: October 23, 2001	:
Issue Date: May 25, 2004	:
Title: PRESS-FORMED GRAIN	:
SNACKS AND PROCESS THEREFOR	:
	DECISION ON PETITION
	UNDER 37 C.F.R. § 1.378(B)

This is a decision on the petition filed June 6, 2008, pursuant to 37 C.F.R. § 1.378(b), to reinstate the above-identified patent.

This petition is **DISMISSED**.

The patent issued on May 25, 2004. The grace period for paying the 3½-year maintenance fee provided in 37 C.F.R. § 1.362(e) expired at midnight on May 25, 2008, with no payment received. Accordingly, the patent expired on May 25, 2008.

This petition has been filed by the Assignee of record. With the present petition, Petitioner has submitted **a portion of the**

3½-year maintenance fee, the surcharge associated with a petition to accept late payment of a maintenance fee as unavoidable, and a statement of facts.

Any petition to accept an unavoidably delayed payment of a maintenance fee filed under 37 C.F.R. § 1.378(b) must include:

- (1) the required maintenance fee set forth in 37 C.F.R. § 1.20 (e) through (g);
- (2) the surcharge set forth in 37 C.F.R. § 1.20(i)(1), and;
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent - the showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Maintenance Fee Requirement:

Petitioner has failed to submit the 3½-year maintenance fee in full (\$450 was submitted towards the \$465 that is required).

The maintenance fee which is due on the 3½ year anniversary of the issue date is presently set at \$465 for a small entity.

The payment of both the surcharge and the 3½-year maintenance fee in full is a prerequisite to the filing of a petition to accept an unavoidably delayed payment of a maintenance fee in an expired patent. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature.

Conclusion

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in § 1.17(h). **AFTER DECISION ON THE PETITION FOR RECONSIDERATION, NO FURTHER RECONSIDERATION OR REVIEW OF THE MATTER WILL BE UNDERTAKEN BY THE COMMISSIONER.**

Accordingly, on request for reconsideration, it is extremely

important that petitioner supply any and all relevant information and documentation in order to meet his burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

The renewed petition should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.378(b)". This is not a final agency action within the meaning of 5 U.S.C § 704.

On renewed petition, Petitioner will need to submit further payment, presently in the amount of \$415:

- The fee that is associated with the 3½-year maintenance fee is presently set at \$465 (set to increase to \$490 on October 2, 2008), and Petitioner has submitted \$450.
- The fee that is associated with the filing of a renewed petition pursuant to 37 C.F.R. § 1.378(b) is \$400.

If on request for reconsideration, the delayed payment of the maintenance fee is not accepted, then the maintenance fee is subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed.

Alternate Venue

Petitioner may also wish to consider filing a petition under the unintentional standard, 37 C.F.R. § 1.378(c). Petitioner should be made aware that the standard associated with a petition filed under this section is far less stringent than the standard associated with a delay asserted to be "unavoidable". As the requirements of 37 C.F.R. § 1.378(b) are more exacting than the corresponding requirements of 37 C.F.R. § 1.378(c), a petition under the former is significantly less likely to be grantable as filed than is a petition under the later. A blank form that can be used in filing a petition under 37 C.F.R. § 1.378(c) may be found here: <http://www.uspto.gov/web/forms/sb0066.pdf>.

Any response to this petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,¹ hand-delivery,² or facsimile.³

¹ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.⁴

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found here: <http://www.uspto.gov/web/forms/sb0123.pdf>.

Petitioner has requested that maintenance fee reminders be sent to his address. A blank fee address form for effectuating this request may be found here:

<http://www.uspto.gov/web/forms/sb0047.pdf>.

2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

The general phone number for the Office of Petitions that should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.⁵

/Paul Shanoski/

Paul Shanoski

Senior Attorney

Office of Petitions

CC: STEWART KRENTZMAN
569 FALETTI WAY
RIVER VALE, NEW JERSEY 07675

5 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).